IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

CRL.A.No. 223 of 2000()

CC.498/1997 of JUDL. MAGISTRATE OF FIRST CLASS COURT, THALASSERY
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APPELLANT: COMPLAINANT

V.M.RAJAN, S/O.KRISHNAN NAIR,
RESIDING AT THAZHATH MEETHAL HOUSE,
CHOKLI AMSOM, MANGAD DESOM,
P.O.CHOKLI, THALASSERY TALUK.

BY ADV. SRI.P.N.RAVINDRAN

RESPONDENTS: ACCUSED & STATE
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1. **T.P.RAJAN, S/O.ANANDAN,**
THAZHEPOYIL HOUSE,
CHOKLI AMSOM, MANGAD DESOM,
THALASSERY TALUK.

2. **STATE OF KERALA,**
REP.BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM,
COCHIN 682 031.

BY ADV. SRI.P.NARAYANAN
PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.A.. NO. 223 of 2000

Dated this the 24th day of July, 2007

JUDGMENT

The appellant is the complainant in C.C.498/97 in the file of the JFCM, Thalassery with respect to the offence under section 138 N.I.Act. The case of the complainant is that the accused borrowed a sum of Rs.1,10,000/- and issued Rxt.P1 cheque towards the discharge of the same and that the cheque when presented got dishonoured for want of sufficient funds in the account of the accused.

2. The evidence adduced in the matter consisted of the testimony of PWs 1 and 2 and Exts. P1 to P8. The defence examined DW1 and got marked Exts.D1 to D3.

3. The trial court after considering the evidence has observed that the testimony of PW1 as to his having given loans to the accused and other persons as claimed is not supported by the evidence as to his financial status it has been brought out in cross examination that he is running a small tea shop and owned only 9 cents of land and that his testimony contained contradictions and his claim as to the issuance of cheque for

Rs.80,000/- etc. was found to be incorrect from the ledger extract of the account of complainant produced.

4. It is the contention of the appellant/complainant that the alleged contradictions and the so called financial status have no relevance as according to him he has not stated that he is having only 9 cents of land; and that he has sufficient income from the tea shop. It is also contended that the respondent has not even sent a reply notice to the lawyer notice demanding repayment.

5. In the circumstances, I find that the matter requires reconsideration. The court below is directed to reconsider the matter after permitting the parties to adduce further evidence if they so desire and dispose of the case on merits. The matter is remitted back to the court below. The parties shall appear before the court below on 14-8-2007.

The Crl.Appeal is disposed of as above.

K.R.UDAYABHANU, JUDGE.

Kvm/-

K.R.UDAYABHANU, J.

CRL.A. 223/2000

JUDGMENT

24-7-2007.